

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

WESTFIELD INSURANCE COMPANY,  
Plaintiff,

vs.

CHIP SLAUGHTER AUTO WHOLESALE,  
INC.; PAUL SLAUGHTER; LEE F.  
SLAUGHTER, JR.; DANIEL FEELEY, by  
his Guardian *Ad Litem* KELLY BLAIR;  
LAUREN DIEHL; and COLIN SANDLER.  
Defendants.

COMPLAINT

CIVIL ACTION NO. 08-CV-00056-JJF

**ANSWER TO COUNTERCLAIM**

By way of this Answer to Counterclaim, Plaintiff Westfield Insurance Company (“Westfield”) avers as follows:

1. To the extent that this allegation sets forth a legal conclusion, no response is required. Denied that the insurance policy referenced in Westfield’s Complaint (“the Westfield policy”) provided insurance coverage to any Counterclaimant for any loss allegedly sustained in the subject matter collision.

2. To the extent that this allegation sets forth a legal conclusion, no response is required. Denied as stated. Admitted that Pfister Insurance Company (“Pfister”) was an independent producer for Westfield at all times relevant hereto.

3. To the extent that this allegation sets forth a legal conclusion, no response is required. Denied as stated. Admitted that any authority held by Pfister to bind Westfield was

derived solely from, and limited by, the terms of the Agency Agreement between Westfield and Pfister in effect at the time of the subject matter collision.

4. To the extent that this allegation sets forth a legal conclusion, no response is required. Westfield lacks sufficient knowledge to affirm or deny the nature of the relationship, if any, between Pfister and Mel Warren ("Warren"). In the event that Warren had any authority to bind Westfield by virtue of his relationship with Pfister then such authority is derived solely from, and limited by, the terms of the Agency Agreement between Westfield and Pfister in effect at the time of the subject matter collision. Denied that any representation by, or on behalf of, or attributable to another party obligates Westfield to afford insurance coverage to any Counterclaimant for any loss allegedly sustained in the subject matter collision.

5. To the extent that this allegation sets forth a legal conclusion, no response is required. Denied that any representation by, or on behalf of, or attributable to another party obligates Westfield to afford insurance coverage to any Counterclaimant for any loss allegedly sustained in the subject matter collision. Westfield lacks sufficient knowledge to affirm or deny the balance of the allegations in this paragraph.

6. To the extent that this allegation sets forth a legal conclusion, no response is required. Denied that any representation by, or on behalf of, or attributable to another party obligates Westfield to afford insurance coverage to any Counterclaimant for any loss allegedly sustained in the subject matter collision. Westfield lacks sufficient knowledge to affirm or deny the balance of the allegations in this paragraph.

7. To the extent that this allegation sets forth a legal conclusion, no response is required. The policy speaks for itself and Westfield is not obligated to affirm or deny the

existence or non-existence of policy terms. Denied that the Westfield policy affords coverage to any Counterclaimant for any loss allegedly sustained in the subject matter collision.

8. To the extent that this allegation sets forth a legal conclusion, no response is required. The policy speaks for itself. Westfield is not obligated to affirm or deny the existence or non-existence of policy terms. Denied that the Westfield policy affords coverage to any Counterclaimant for any loss allegedly sustained in the subject matter collision.

**COUNTERCLAIM COUNT I – BREACH OF CONTRACT**

9. To the extent that this allegation sets forth a legal conclusion, no response is required. Admitted that Westfield denied any demand by the Slaughter Defendants' for insurance coverage under the Westfield. Westfield lacks sufficient knowledge to affirm or deny the balance of the allegations in this paragraph.

10. To the extent that this allegation sets forth a legal conclusion, no response is required. Admitted that Westfield denied any demand by the Diehl and Feeley Defendants insurance coverage under the Westfield for losses allegedly sustained in the subject matter collision. Westfield lacks sufficient knowledge to affirm or deny the balance of the allegations in this paragraph.

11. To the extent that this allegation sets forth a legal conclusion, no response is required. Denied.

12. To the extent that this allegation sets forth a legal conclusion, no response is required. Denied.

13. To the extent that this allegation sets forth a legal conclusion, no response is required. Westfield denies any obligation to the Diehl and Feeley Defendants. Westfield's

Complaint in the instant case speaks for itself and Westfield is not obligated to affirm or deny the existence or non-existence of allegations in said Complaint.

14. To the extent that this allegation sets forth a legal conclusion, no response is required. Westfield denies any obligation to the Diehl and Feeley Defendants.

15. To the extent that this allegation sets forth a legal conclusion, no response is required. Denied that Defendants Slaughter, Diehl and Feeley are entitled to the declaratory relief sought in this paragraph.

**COUNTERCLAIM COUNT II – REFORMATION**

16. Westfield hereby incorporates its responses to the preceding paragraphs as if fully set forth herein.

17. To the extent that this allegation sets forth a legal conclusion, no response is required. Denied that any representation by, or on behalf of, or attributable to another party obligates Westfield to afford insurance coverage to any Counterclaimant for any loss allegedly sustained in the subject matter collision. Westfield lacks sufficient knowledge to affirm or deny the balance of the allegations in this paragraph.

18. To the extent that this allegation sets forth a legal conclusion, no response is required. Denied that any representation by, or on behalf of, or attributable to another party obligates Westfield to afford insurance coverage to any Counterclaimant for any loss allegedly sustained in the subject matter collision. Westfield lacks sufficient knowledge to affirm or deny the balance of the allegations in this paragraph.

19. To the extent that this allegation sets forth a legal conclusion, no response is required. Denied that any representation by, or on behalf of, or attributable to another party obligates Westfield to afford insurance coverage to any Counterclaimant for any loss allegedly

sustained in the subject matter collision. Westfield lacks sufficient knowledge to affirm or deny the balance of the allegations in this paragraph. Denied that Defendants are entitled to the declaratory relief sought in this paragraph.

20. To the extent that this allegation sets forth a legal conclusion, no response is required. Denied that Defendants Slaughter, Diehl and Feeley are entitled to the declaratory relief sought in this paragraph.

WHEREFORE, Plaintiff Westfield Insurance Company hereby seeks dismissal of Defendants' Counterclaim, the relief sought in Westfield's Complaint for Declaratory Judgment and such other relief as this Court deems necessary and just.

**AFFIRMATIVE DEFENSES TO COUNTERCLAIM**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint and each allegation contained therein fails to state facts sufficient to constitute a cause of action or claim against Westfield upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint fails to set forth facts which would give rise to a claim under the Westfield insurance contract at issue in this case.

**THIRD AFFIRMATIVE DEFENSE**

Westfield is not liable under the disputed insurance policy to the extent that it would be contrary to public policy to grant the relief sought.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims may be barred, in whole or in part, by the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

The Westfield insurance policy contains certain limits of liability. In the event that Westfield is liable, its liability is restricted to such limits.

**SIXTH AFFIRMATIVE DEFENSE**

Westfield is not liable under the its insurance policy to the extent that the exclusions, terms, conditions and limitations contained therein apply to bar coverage.

**SEVENTH AFFIRMATIVE DEFENSE**

Coverage under the alleged Westfield insurance policy is provided only to the named insured or any additional insureds. To the extent the claims for recovery of losses are sustained by entities and/or persons who do not qualify as insureds under the terms of the insurance policy, those claims are barred.

**EIGHTH AFFIRMATIVE DEFENSE**

Westfield has no obligation under the alleged the Westfield insurance policy for costs incurred as a result of the violation of any rule, law or regulation or for costs incurred in the nature of criminal fines or sanctions, civil fines or sanctions, penalties and/or punitive damages that may be imposed.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims may be barred, in whole or in part, to the extent that any property damage, bodily injury, or personal injury or event resulting in such injury or damage was expected or intended by any insured or was otherwise non-fortuitous.

**TENTH AFFIRMATIVE DEFENSE**

Westfield has no obligation to any other party based upon the actions/inactions of Mel Warren and/or Pfister Insurance Company to the extent that no actual or apparent agency relationship existed between Westfield one part and Warren/Pfister on the other.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims may be barred, in whole or in part, by the doctrines of waiver, and/or estoppel.

WHITE AND WILLIAMS LLP



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April 16, 2008

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FOR THE DISTRICT OF DELAWARE

WESTFIELD INSURANCE COMPANY, :  
Plaintiff, :  
  
vs. : COMPLAINT  
: :  
CHIP SLAUGHTER AUTO WHOLESALE, :  
INC.; PAUL SLAUGHTER; LEE F. :  
SLAUGHTER, JR.; DANIEL FEELEY, by :  
his Guardian *Ad Litem* KELLY BLAIR; :  
LAUREN DIEHL; and COLIN SANDLER. :  
Defendants. : CIVIL ACTION NO. 08-CV-00056-JJF

**CERTIFICATE OF SERVICE**

I, James S. Yoder, being duly sworn according to law, deposes and says that I am employed by White & Williams, LLP., which is counsel for the Plaintiff/Counterclaim Defendant, and on the 16<sup>th</sup> day of April 2008, I caused copies of the Answer to Counterclaim to be electronically served upon the parties listed below.

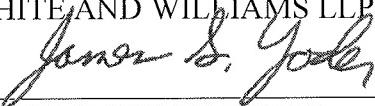
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